

# Lost privacy and public scrutiny 'provided' by law

By David Middlebrook and Robert W. Rucker

The Pension Protection Act of 2006 sets new standards and guidelines for the funding of company pension plans and is intended to insure that Americans who have earned certain benefits while working for their company will actually receive those benefits. This legislation was needed in light of the well-known recent corporate failures, which resulted in employees who thought they had pension benefits learning that the benefits had not really been funded.

Various unrelated add-on provisions were included in this law. In particular, for the first time, certain church tax return forms will now be available for public review and inspection. Certain

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private financial activities of the church must now be reported for public inspection. Before this law, churches were either exempt from most federal filings or, at the least, reported certain financial activities in private.

Most taxpayers enjoy privacy in their tax filings. The government has decided that churches should not be entitled to that same basic privacy protection. All of those corporate wrongdoers who caused the pension scandals that led to enactment of this law in the first place and who have been investigated and sometimes prosecuted for violation of the law still get to report their taxes in private. A church that has done nothing wrong, that has done nothing other than evangelize and improve its community, may no longer enjoy that same privilege.

### Nonprofit tax exemption

As a general proposition, nonprofit corporations including churches are exempt from a wide range of taxes on a local, state and federal level. The revenues that a church receives from tithes and offerings are not taxed. Unlike most other nonprofits, churches do not turn in informational tax returns on such revenue.

Why are churches treated differently from other nonprofits in this regard? Because, for the past several centuries of our existence we have believed in a freedom of religion and freedom of association and a separation of church and state, that dictated a different treatment. We believe these protections to be so fundamental that they make up the First Amendment to the U.S. Constitution. Because of the First Amendment, churches receive different treatment from the Internal Revenue Service (IRS) in such matters as audit standards and reporting requirements.

It is also common in this day and age for nonprofit organizations to engage in activity that is considered unrelated business income, which is income that is created by an activity that is not part of the organization's basic nonprofit, exempt purpose. For example, some churches lease out space they do not currently need or use to regular, for-profit businesses. Because acting as a landlord is not part of a nonprofit's stated function, this extra income might be treated as "unrelated business income". All nonprofits, including churches, are currently obligated to report such unrelated income to the IRS. The new change in the law is that this income tax filing is now subject to inspection by the general public.

### Unrelated business income

We know of many church and ministry clients who have unrelated business income. Why do they do it and what do they do with the extra income? Some of them do it to improve their financial base. Having the extra income allows them to pay for overhead such as salaries or mortgage payments. It may allow them to expand their reach and focus, to establish new ministries or improve their facilities.

Other churches purposely pursue unrelated business investment opportunities to fund worthy causes that they would not otherwise be able to fund strictly from donations such as to develop housing or create jobs. Depending upon the context and extent of their activities in this area, they may need to file an unrelated business income tax return. Why would such filings be available for public inspection?

Nonprofit organizations are considered a form of public trust

and therefore it is deemed appropriate to have their financial activities available for the public to review. It is intended to provide accountability or transparency. However, historically churches have not had to turn in these same tax returns and have certainly not had those returns made public.

So what has changed? Has the church world gone berserk, making way too much money so that it can no longer be trusted? From our discussions with most church executives, too much money does not seem to be a recurring problem. Are church executives pocketing the "extra" money to pay for their extravagant lifestyles? Again we have not observed that to be the case. Keep in mind that there is already a federal prohibition against any private individual receiving unreasonable compensation from his or her church and the IRS has shown a persistent willingness and ability to ferret out such problems and impose substantial penalties.

Requiring public disclosure of church financial activities does not improve the government's ability to enforce existing nonprofit laws. After all, if the returns are filed with the IRS in private, the government has the ability to review those returns and determine if further investigation is warranted. They perform this function each year with millions of other tax filings without the need for public disclosure.

### Financial decisions

Churches are unique both to the for-profit and nonprofit worlds. Many of their financial decisions are based upon personal interpretation of scripture and religious belief as to their role, duty and function in the world. For the government to not allow such decisions to be made in private is a direct attack to the autonomy of the church. If a foreign army were to invade and take over our country, one of the first things it would do would be to suspend the First Amendment. Our own government officials accomplish the same purpose when they diminish church rights, not like an invading army all at once, but like petty bureaucrats, a little at a time, and hide the fact in the back of an unrelated "pension reform" law.

If this change in law seems minor or

unimportant, it is not. A government that can take away your church's privacy just a little can also do it a lot and do a whole lot of other things. You should contact your elected government officials and ask them why convicted criminals still get to file their taxes in private, but that when your church has unrelated business income to report, it does not get the same right. What do they think your church is doing that it does not deserve a right of privacy under the First Amendment? This law can and should be changed.



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